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Your Ref: JPS/SHF/BLT:P53078.AU

Examiner's report no. 3 on patent application no. 2003279091
by Paul Giampavolo

Last proposed amendment no. 2

Dear Madam/Sir,

Thank you for the reply of 10 February 2010 to the last report. I have considered it and believe that there are lawful grounds of objection to the application. These grounds of objection are:

11. I have considered your submissions but still wish to maintain that the invention defined in claims 1, 2, 4, 5, 12, 13, 17-20, 22, 24 & 25 is not novel over citations D1-D4.

Although the preamble of claim 1 defines the guard as a pallet guard, this does not limit it to use for guarding pallets only. There is nothing preventing a person from using the claimed invention as a guard for objects other than a pallet. The technical features of the claimed invention are clearly taught by the citations and there is clear and unmistakable directions from the prior art to the claimed invention and it is therefore not novel.

Even if the applicant's arguments were to be accepted I still submit that the claimed invention is not novel. Pallets are widely used in the construction industry to transport and store construction material and I submit that it is not unreasonable to suggest that highway or road barriers as taught in D1-D4 could be used to protect pallets in construction zones which as the applicant would agree are quite often located on the sides of roads. Therefore the claims mentioned above are clearly anticipated by citations D1-D4.

12. I also maintain that the invention defined in claims 1 & 17 is not inventive over citation D5.

I strongly disagree with the applicant's argument that it is not common general knowledge in the art that increasing the size of the base of an object will increase the stability of the object. It is a well known principle of physics that the stability of an upright object can be increased by lowering its centre of gravity and one way of achieving this is by making the bottom portion bigger or wider than the top portion. It is for this very reason that the highway barriers disclosed in D1-D4 are substantially wedge or triangular shaped having a bottom portion that is wider than the top portion.

In support of my contention I am attaching an extract from the internet
<http://extranet.barneyschool.org.uk/myphysicsweb/Stability.pdf>

I also refer you to the following website for a preview of the book Nelson Science Physics by Ken Dobson and Martin Roberts (2nd edition)
http://books.google.com/books?id=5I9nm-HULooC&pg=RA1-PT85&lpg=RA1-PT85&dq=tipping+%22centre+of+mass%22+stability+shape&source=bl&ots=ygnkNINB_Jr&sig=Je7ONCt-kcHHIRB8SD9WekbsNOQ&hl=en&ei=Nc-ZS6qpF8ugkQWzrqTJCA&sa=X&oi=book_result&ct=result&resnum=4&ved=0CA4Q6AEwAzhQ#v=onepage&q=&f=false . See pages 118-119 and Fig 6 wherein it clearly explains that an object with a trapezoidal cross-section is more stable than one with a rectangular cross-section. (This web page cannot be printed and hence I am unable to attach a copy for your reference. As the web address is very long I can send the applicant the link to the website by email if required).

A person skilled in the art faced with the problem of increasing the stability of the guard section of D5 would without any inventive ingenuity apply this common general knowledge and make the bottom portion wider than the top portion and thereby arrive at the claimed invention.

The features of appended claims 2-7, 9, 11, 12, 18-25 are also disclosed in D5 and these claims also therefore lack an inventive step.

13. Furthermore, it is considered that the features added by appended claims 8, 10, 13-16 relate to arrangements that are merely matters of design choice when the general technical knowledge about the state of the art is used and therefore cannot contribute to providing a patentable inventive step.

I apologise for any inconvenience resulting from your response not being considered within the time limit set out in our Customer Service Charter.

You have until 26 November 2010 to overcome all my objection(s) otherwise your application will lapse.

You will need to pay a monthly fee for any response you file after 12 months from the date of the first report.

You will also need to pay any annual continuation fees that apply. These will normally be first due five years from the filing date. Please note however that earlier commencement dates apply for divisional applications.

Information about fees may be obtained by phoning 1300 651 010.

Yours faithfully,



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